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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. [redacted] 80

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT OF PETITION.

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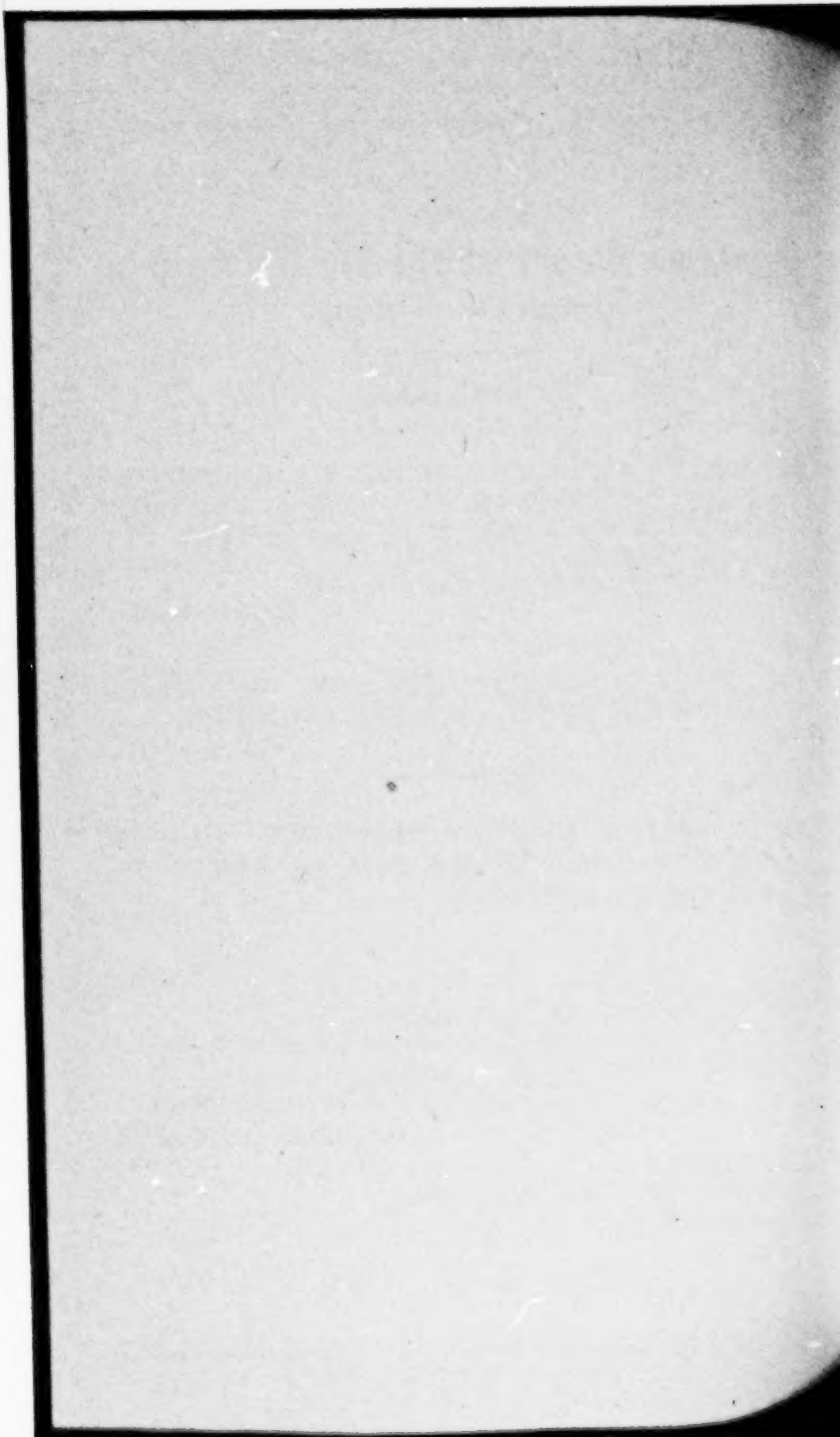

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*Petitioners,*

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioners, International Brotherhood of Teamsters and Chauffeurs, Local Union Number 179, A. F. of L., Joliet, Will County, Illinois, and Virgil Floyd, Secretary-Treasurer of said Local Union No. 179, respectfully petition this Honorable Court for a writ of certiorari to the Illinois Supreme Court.

### Statement of the Matters Involved.

The Union, one of petitioners herein, which is composed of teamsters and service station employees, sought to persuade the respondents to become members of the Union.

The respondents, Dinoffria and Clementi were competitors and self-employers in the sense of doing their own work in the operation of service stations, Dinoffria being actually an employee of the Standard Oil Company from which he leased his service station, and Clementi being substantially an employee of the Texas Company.

The respondents refused to become members of the Union and the teamsters who were members of the Union ceased to deliver gasoline to them. Respondents thereupon sought an injunction from the Circuit Court of Will County, by a complaint in which they charged coercion and violence. On hearing, the trial court found that there was no intimidation or violence, and that, under decisions of this Court, the Union and its members were protected by the guarantee of freedom of speech given by the Federal Constitution. The full text of the trial court's opinion is found on pages 21-27, and its decree on page 28 of the Transcript.

The respondents, who were plaintiffs below, thereupon appealed to the Appellate Court. The Appellate Court not having jurisdiction upon constitutional issues, Dinoffria and Clementi by such appeal automatically waived constitutional issues, as this Court is well informed by the recent case of *Parker* v. *People of the State of Illinois,* 68 S. Ct. 708, 92 L. ed. 685 (April 5, 1948).

Although without jurisdiction to pass upon a constitutional issue, the Appellate Court gives no attention to the facts which may have determined that respondents were employees, but bases its opinion primarily upon the contention that freedom of speech of a union and its members as guaranteed by the First and Fourteenth Amendments does not apply to their relations with self-employers. The Appellate Court said:

"In no case, however, has the Court sanctioned or

been called upon to approve peaceful picketing or boycotting or other conduct of a labor union where it has been directed against a self-employer who has no employees, as in the instant case."

This Court does not agree with that statement. *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468; 57 S. Ct. 857; *Bakery & Pastry Drivers* v. *Wohl*, 315 U. S. 769; 62 S. Ct. 816; *Cafeteria Employees Union* v. *Angelos*, 320 U. S. 293; 64 S. Ct. 126.

The opinion of the Appellate Court appears at pages 45-55 of the transcript, and must be read in full in order to determine whether it is based in whole or in part upon a federal constitutional issue.

Immediately upon their becoming informed of the opinion of the Appellate Court, the petitioners here, who were defendants below, moved for a rehearing, which was denied. This was followed by a motion to transfer the case to the State Supreme Court. A transfer was denied, and on writ of error to the Supreme Court of Illinois, the writ of error was dismissed on the ground that no determination of a constitutional issue was involved in the Appellate Court's opinion. The Supreme Court of Illinois recognizes that writ of error was a matter of right if the Appellate Court had passed upon a constitutional issue. The opinion of the Supreme Court of Illinois appears in full in the transcript (pp. 58-63), and must be read in full in order to determine whether its conclusion is correct. The petitioners present the following as an outline of what they claim to have occurred:

(1) The plaintiffs (respondents here) brought suit in the state's trial court—the Circuit Court.

(2) The trial court had jurisdiction and decided against them on issues of law and of fact.

(3) The plaintiffs appealed to the Appellate Court—a court having no jurisdiction over constitutional issues, and by such appeal waived the constitutional issues.

(4) The Appellate Court decided the case adversely to defendants—upon state and federal constitutional issues.

(5) The defendants made and the Supreme Court of Illinois denied a motion to transfer the case to the Supreme Court of Illinois, the Court having jurisdiction over constitutional issues (Trans. 55-56).

(6) The defendants then sought a writ of error from the Appellate Court to the Supreme Court of Illinois—the procedure for the presentation of such issues.

(7) The Supreme Court of Illinois recognizes its duty to pass upon such issues, but has dismissed the writ of error on the ground that the Appellate Court did not determine constitutional issues in its opinion.

(8) The question is one to be determined on the face of Appellate and Supreme Court opinions. If the Appellate Court's opinion finds basis on federal constitutional issues, a state court without jurisdiction is made the body for final construction of the constitution of the United States.

## This Court Has Jurisdiction.

Jurisdiction of this Court is invoked under Title 28, Section 344(b) of the United States Code.

There are special and important reasons for the granting of review on writ of certiorari. (Supreme Court Rule 38, par. 5).

Rehearing was denied in this case by the Supreme Court of Illinois on March 11, 1948.

The jurisdiction over the matter at issue is clear and undeniable if the Appellate Court of Illinois passed upon

federal constitutional issues. The Supreme Court of Illinois has made the determinations of the Appellate Court final and not subject to review.

If this Court determines that it has jurisdiction, it clearly has authority to determine the status of respondents, and to determine whether organizations of employees may deal with them by peaceful speech.

## The Questions Presented.

This case presents questions of jurisdiction and issues of law. Three issues are presented to this Court:

(1) May the Illinois Supreme Court, in violation of the Fourteenth Amendment to the U. S. Constitution, deprive residents of the State of Illinois of their right to have constitutional issues determined by the Illinois Supreme Court? May it refuse to hear and to decide constitutional matters, thereby making final and upholding a decision on constitutional questions by the Illinois Appellate Court, which decision was rendered by that Court in violation of its jurisdiction.

(2) Are oral communications of unions and union members, made without threats of violence or intimidation in the course of peaceful organizing activities, protected by the right of freedom of speech, regardless of whether they are directed against employees or self-employers, or is that protection forfeited because those communications are addressed to or affect self-employers?

(3) Are small filling station operators who are under economic dependence and control of the gasoline supply companies, self-employers or do they not rather possess, in legal contemplation, the status of company employees?

**Reasons Relied Upon for Allowance of Writ.**

(1) The Illinois Supreme Court erred in refusing to grant petitioners' motion of transfer and writ of error since it thereby deprived the petitioners of due process of law in violation of the Fourteenth Amendment to the U. S. Constitution, thus denying petitioners an opportunity to be heard on the constitutional question of freedom of speech which was decided by the Illinois Appellate Court without having jurisdiction to do so.

(2) The Illinois Appellate Court erred in deciding that the right of freedom of speech as guaranteed by the Fourteenth Amendment to the U. S. Constitution does not protect oral communications of unions or union members which do not contain any threats of violence or intimidation, simply because they are addressed to or are directed against or might affect self-employers.

(3) Small filling station operators such as are involved in the present case, may not be regarded as self-employers but must be considered as having the status of employees.

Respectfully submitted,

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# SUPREME COURT of the UNITED STATES

## No.

OCTOBER TERM, A. D. 1947.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

### The Opinions Below.

The opinion of the Illinois Appellate Court is reported in 331 Ill. App. 129, 72 N. E. 2d 635; the opinion of the Illinois Supreme Court in 399 Ill. 304, 77 N. E. 2d 661. The opinions are also printed in full in the record.

### Jurisdiction.

The jurisdiction of this Court is invoked under Section 344 (b) of the Judicial Code.

The Illinois Appellate Court for the Second District decided the constitutional question of freedom of speech in its relation to the organization of self-employers by unions, (a) without having jurisdiction to do so, and (b) in contravention of established principles. The Illinois Supreme Court refused to hear the case by denying a transfer motion and a petition for writ of error, thus vesting the final authority to determine a federal constitutional question in

a court which had no jurisdiction. It thereby deprived the petitioners of due process of law.

The opinion by which the Illinois Supreme Court refused to grant the writ of error was rendered on January 22, 1948, and the petition for rehearing was denied on March 11, 1948.

**Statement of the Case.**

The facts involved in this case are simple.

Respondents Leo John Dinoffria and Frances Dinoffria and John Clementi and Mary Clementi were gasoline station operators in Joliet, Illinois. They operated their stations alone without the help of any employees.

The premises on which the Dinoffrias (husband and wife) conducted their business and the equipment with which they conducted their business were leased from the Standard Oil Company. Up to the time of the incident which gave rise to the present procedure, they also purchased all gasoline and petroleum products from the Standard Oil Company. The gasoline purchased from the company was delivered to them in tank cars of the company, driven by a company employee by the name of James E. Poole who was a member of Local 179 of the Chauffeurs and Teamsters Union (Rec. 30, 34.)

Local 179 counted among its members many filling station employees and many so-called independent filling station operators. (See the trial court's opinion, Rec. 22, in which the court emphasized that many filling station operators of the City of Joliet were members of the union). In order to protect the working conditions of these members, Local 179 engaged in an organizing campaign, to get as many filling station employees and small gas station operators as possible into the union. The gas station operators were, upon joining the union, requested to sign an agreement in which they promised to conform to certain closing hours and to other working conditions and to eliminate the

harmful practice of sales premiums. (See Plaintiffs' [Respondents] Exhibit No. 7, Rec. 39, 40, 44, which is the union's form of agreement with filling station operators.)

On January 25, 1946, a man came to the Dinoffria station and solicited Mrs. Dinoffria to have her husband join the union. When she said: "What for? We don't have to belong", the man replied: "Oh yes, you do," and left the premises (Rec. 32-33). Thereafter, Ellery Floyd, business agent of the union—and not Virgil Floyd, as alleged in the complaint, advised one of the union drivers of the Standard Oil Company to request Poole not to make any more deliveries to the Dinoffrias since the union had difficulties with them (Rec. 35).

On the same day (January 25) on which Mrs. Dinoffria was solicited to join the union, the Dinoffrias placed an order for gasoline with the Standard Oil Company; however, the driver, Poole, who saw the order in the call book in which all orders to be filled were entered by a company clerk, did not make the delivery, and the company neither requested him to do so nor took any other action whatsoever. No other order was then placed by the Dinoffrias (Rec. 31).

As to the respondents John and Mary Clementi (husband and wife) the evidence was submitted to the court in the form of a stipulation. According to that stipulation, John and Mary Clementi operated a gas station, without any employees, on their own premises in Joliet. They sold at their station products of the Texas Company with which they had a valid sales agreement (Rec. 38-39).

On or about January 25, 1946, John Clementi was approached by members of Local 179 of the Teamsters and Chauffeurs Union and solicited for membership in the union. He refused to join the union and when he afterwards placed new orders with the Texas Company they were not filled. Lloyd Gibbs who was the driver of the Texas Com-

pany and a member of Local 179 was informed by the union that a dispute existed by virtue of the fact that John Clementi refused to join the Union (Rec. 38-39).

The respondents filed originally a suit for temporary and permanent injunctions and for damages against Local No. 179 of the International Brotherhood of Teamsters and Chauffeurs, its secretary-treasurer Virgil Floyd, and against the Standard Oil Company (Indiana) and the Texas Company. Later the two companies were dismissed from the action (Rec. 14), and an amended complaint was filed which was directed only against the union and its secretary-treasurer (Rec. 6-13).

The motion for the temporary injunction to restrain the union and its agents from interfering with the deliveries of gasoline and petroleum products to the respondents' stations was heard and denied and the cause was set for hearing on the merits (Rec. 14).

At the conclusion of the hearing on the merits, the court filed an opinion (Rec. 21), and entered a decree finding the issues for the petitioners and against the respondents and dismissed the amended complaint for want of equity (Rec. 28). The respondents appealed that decision to the Appellate Court.

In their application to the Circuit Court for an injunction, respondents in their amended complaint, relied upon eight grounds designated as paragraphs (a), (b), (c), (d), (e), (f), (g), and (h), with paragraphs (b) to (g) seeking relief from alleged picketing, assaults, violence, conspiracy and boycotting (Rec. 9, 13). All of these paragraphs were considered in the opinion of the Circuit Court (Rec. 21, 22), but paragraphs (b) to (g) were omitted from the abstract submitted to the Appellate Court on appeal to that Court by respondents; and their notice of appeal asked for a

reversal of the decree of the Circuit Court, with instructions to:

> "1. Enter a judgment in favor of the plaintiffs and against the defendants for damages caused by the wrongful stoppage of deliveries of gasoline and petroleum products to the plaintiffs.
>
> "2. Enter a decree in favor of the plaintiffs and against the defendants enjoining the defendants from interfering with the deliveries of gasoline and petroleum products to plaintiffs' places of business" (Rec. 29).

The Appellate Court reversed the decree of the trial court and remanded the cause to the trial court with direction to enter a decree and to proceed in accordance with the views expressed in the opinion of the Appellate Court (Rec. 40).

The petitioners, thereupon, filed a petition for rehearing, and later also a motion for transfer of the case to the Supreme Court, both of which were denied by the Appellate Court (Rec. 40).

Afterwards the petitioners filed a motion to transfer which was denied by the Supreme Court of Illinois. (Rec. 55, 56) A writ-of-error was then sought from the Illinois Supreme Court, and was denied on the ground that the Appellate Court did not decide a constitutional issue but founded its opinion upon facts.

The petitioners take the position that the Appellate Court, in reversing the trial court's judgment, based its decision upon a determination of the constitutional question of freedom of speech in its relation to the organization of self-employers by unions; that the Appellate Court lacked jurisdiction to make such a determination; and that the Illinois Supreme Court, in refusing to hear the case upon petitioners' motion for transfer, or application for

writ of error deprived the petitioners of any opportunity to present their position as to constitutional issues before a court of competent jurisdiction. They, further, take the position that the Appellate Court without jurisdiction decided the constitutional question erroneously, since this Court as the final arbiter in all questions of the federal Constitution had repeatedly declared that the organization of self-employers was a lawful labor objective.

## Errors Relied Upon.

The Illinois Appellate Court erred in determining the constitutional issue of free speech in its relation to the organization of self-employers by unions, since it had no jurisdiction to decide that question, and since it determined that issue in contravention of the repeated pronouncements of this Court to the effect that the organization of self-employers was a lawful labor objective.

The Illinois Supreme Court erred in denying writ of error on the ground that the Appellate Court had founded its judgment upon facts which did not involve a constitutional issue.

## ARGUMENT.

### I.

**The Illinois Appellate Court decided a federal Constitutional question without having jurisdiction.**

The Illinois Circuit Court (trial court) found the issues in favor of the petitioners. The respondents appealed the case to the Illinois Appellate Court which reversed the lower court's decision and rendered an opinion which it founded upon a determination that the constitutional right of free speech as interpreted by this Court did not apply to organizing activities of unions and union members with respect to self-employers who hired no employees. Two oral communications made by members of the petitioning union were considered unlawful by the Illinois Appellate Court and formed the basis of that Court's decision that the petitioning union engaged in unlawful conduct: (a) the solicitation of respondent, Frances Dinoffria, for membership in the union; and (b) the request directed by union agents to union members to discontinue the delivery of gasoline to the respondents. These oral communications, which by their very nature involved the question of freedom of speech, were considered by the Appellate Court upon that basis.

The Appellate Court was fully aware that in determining the lawfulness or unlawfulness of oral communications, it necessarily had to consider the constitutional issue of freedom of speech. It expressly referred in its opinion to the guarantee of freedom of speech and pointed out that picketing as the working man's means of communication was upheld by the United States Supreme Court in divers

situations, including cases where no employer-employee relationship existed. It pointed to the Swing, Meadowmoor and Thornhill cases, and then said:

> "In no case, however, has the court sanctioned, or been called upon to approve peaceful picketing or boycotting or *other conduct* of a labor union where it has been directed against a self-employer who hires no employees, as in the instant case." (Emphasis supplied.)

The clear meaning of these words was that although the United States Supreme Court had protected labor conduct in various situations in the past, under the right of freedom of speech, it had never done so—in the opinion of the Appellate Court—if that conduct was directed against a self-employer.

In other words, the Appellate Court stated that the right of freedom of speech could not protect the conduct of the union in any case, including the present, in which the organizational activities of the union were directed against self-employers, and not against employees. The Appellate Court, therefore, did not decide the case—as the Illinois Supreme Court concluded—upon the factual basis, but upon the reasoning that, under no aspect or privilege or right whatsoever, especially and including the right of freedom of speech as guaranteed by the U. S. Constitution, could the communications of the union agents be deemed lawful since they were directed against self-employers.

It was not the means employed by the union—as the Illinois Supreme Court stated—which were decisive for the Appellate Court's declaration that the union's conduct was unlawful, but the aim—organization of self-employers; and it did not make any difference, in the Appellate Court's reasoning, whether the means used to reach that aim were perfectly peaceful and consisted in oral communications

free from threats of violence or intimidation, or whether they were coercive and violent. The evil making the union's conduct unlawful was in the Appellate Court's opinion the organization of *self-employers,* and not the fact that this aim was not reached by peaceful picketing, or that there was no community of interest between the union members and the self-employers. However peaceful the means employed might have been and however intimate a community of interest might have existed, the Appellate Court still would have deemed the union's conduct unlawful. This is clearly preceptible from the case of the respondents Clementi, where there is not even the slightest factual basis in the record which could warrant any finding that the union engaged in threats or intimidation.

It is, therefore, evident that the Appellate Court decided the constitutional issue of freedom of speech in its relation to the organization of self-employers by unions.

## II.

**The Illinois Supreme Court by its refusal to recognize the fact that the Appellate Court decided a Constitutional issue, deprived the petitioners of due process of law.**

Although the Illinois Appellate Court passed upon the constitutional issue of freedom of speech and based its opinion upon an alleged distinction between employees and self-employers, the Illinois Supreme Court refused to take cognizance of the determination of that issue by the Appellate Court. After the decision of the Appellate Court, with its ruling on the constitutional issue, the petitioners filed a motion with the Illinois Supreme Court to have the case transferred to it, and later a writ of error based upon the ground that the Appellate Court had decided a consti-

tutional issue which it had no jurisdiction to decide and which alone the Supreme Court could hear and determine. The Supreme Court denied both motion and writ of error. It acknowledges that when an Appellate Court passes upon a constitutional question by injecting it into the cause for the first time, the parties are entitled to urge objections, based on constitutional grounds, to the jurisdiction of that Court, at any time after the decision was rendered, since the parties could not anticipate the entry of a judgment in excess of the Court's jurisdiction. It, also, emphasized that such a judgment of the Appellate Court in excess of jurisdiction was *coram non judice* and ineffectual for any purpose but that it would assume and retain jurisdiction on review thereof.

Thus it took notice of the legal rule in theory; but it failed to apply it in practice. For, in refusing to grant the writ of error it denied that the Appellate Court had decided a constitutional question and declared that the decision was founded upon facts. It ignored the statement of the Appellate Court that the union's conduct as manifested in certain oral communications was unlawful, and that such a statement necessarily involved a determination of the question of freedom of speech. It ignored the fact that no conduct could be deemed unlawful if it was protected by the U. S. Constitution, and that the Appellate Court, in judging that conduct, expressly referred to the U. S. Constitution. It quoted the following statement of the Appellate Court with respect to the constitutional issue in its relation to self-employers:

> "The primary issue confronting this Appellate Court is whether the conduct of the defendant union in instructing its members not to make deliveries of gasoline to the plaintiffs, who are self-employers and hire no employees, on the sole ground that plaintiffs refuse to join the union, is unlawful and should be

> restrained by injunctive process and defendants be made to pay damages for the loss occasioned by their conduct."

Having thus recognized the constitutional issue as to self-employers, and having further recognized that it was the main basis—"the primary issue"—of the decision by the Appellate Court, the Supreme Court of Illinois denied that there was such an issue and stated that there was merely an issue of fact.

It, also, made the following statement in its opinion:

> "The Appellate Court specifically states that there is no common interest and *that the Union's conduct could not be protected by freedom of speech.*" (Emphasis supplied.)

A clearer and more manifest recognition of the fact that the Appellate Court determined the constitutional issue of free speech could hardly be imagined, and the subsequent denial of that fact is not quite understandable and militates against the principle that "it is of prime importance that no constitutional freedom, least of all the guaranties of the Bill of Rights, be defeated by insubstantial findings of fact screening reality." *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287, 85 L. ed. 836, 61 S. Ct. 552, 132 A. L. R. 1200.

Considering the statements made by the Illinois Supreme Court in its opinion, it recognized all elements of a constitutional issue in the opinion of the Appellate Court, but it refused to consider such elements as Constituting a constitutional issue. Yet, this refusal to recognize it in form, led to the denial of the motion for transfer and of the writ of error, which denials in turn deprived the petitioners of due process of law in violation of the Fourteenth Amendment to the U. S. Constitution by not affording them any opportunity to be heard on the constitutional issue, determinative in this case.

As soon as the Appellate Court rendered its opinion, the petitioners filed a petition for rehearing. The Appellate Court denied this petition and when the petitioners attempted to obtain a trial before the Supreme Court in order to have their case heard before that court, which alone had jurisdiction, they were met with the same refusal. Thus, the petitioners were deprived of any opportunity, not only to plead their case, but also to plead it before a competent court. If the Appellate Court's opinion would be allowed to stand without any possibility to have it reversed, it would mean that a state court, having no jurisdiction, could be the final arbiter in the state in the construction and interpretation of the United States Constitution and could determine such constitutional questions without affording the parties involved any opportunity to present argument and evidence to prove their side of the case. That is denial of due process of law.

The requirement of the Illinois practice that constitutional questions should be taken directly from the trial court to the Illinois Supreme Court, and that, if review is first sought in the Appellate Court, all constitutional issues, whether state or federal, are deemed to be waived, imposes no limitation upon the petitioners for certiorari in this case. Such waiver pertains only to the appellants and not to the appellees. "The principle of waiver of issues which might have been heard by the Supreme Court does not apply to the appellee. . . . " O. L. McCaskill: Illinois Civil Practice Act Annotated, The Foundation Press, Inc., Chicago 1933, p. 319, citing *Kowalczyk* v. *Swift & Co.*, 317 Ill. 312. See also *The People* v. *Richardson,* 397 Ill. 84 (1947). It should also be noted that the recent decision of this Court in *Parker* v. *People of State of Illinois,* 68 S. Ct. 708, 92 L. ed. 685, finds no application to the petition in this case, since it was the *appellant* in these proceedings

who took the case to the Appellate Court and not to the Illinois Supreme Court and thereby was deemed to have waived the constitutional issues.

This Court should grant the remedy prayed for by petitioners because "the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked. Even though the claimed constitutional protection be denied on non-Federal grounds, it is the province of this Court to inquire whether the decision of the state court rests upon a fair and substantial basis." *Lawrence* v. *State Tax Commission,* 286 U. S. 276, 282, 76 L ed. 1102, 52 S. Ct. 556.

## III.

**The Union is protected by the constitutional right of freedom of speech in its effort to organize respondents.**

The right of a union to win new members and so to strengthen the influence of its organization, is protected by the right of freedom of speech as guaranteed by the United States Constitution, and is not impaired by the fact that the prospective member sought to be enrolled is a self-employer. The right of freedom of speech extends to every person alike and its lawfulness might depend upon the contents of a statement made or the mode in which it has been made, but never upon the economic, occupational or social status of the person to whom a statement is directed. Employees, therefore, have a right to induce other persons, whether self-employers or not, to join their organizations. To restrict the peaceful exercise of such right would be, as indicated above, in violation of the Federal Constitution.

This Court, which is the final arbiter in all questions of the Federal Constitution, has repeatedly declared that the organizing of self-employers is a proper labor objective and that unions are protected in the exercise of that right from any infringement by legislative or judicial action of a state. See *Senn* v. *Tile Layers Protective Union,* 301 U. S. 468, 57 Sup. Ct. 857, 81 L. ed. 1229 (1937); *Bakery & P. Drivers & Helpers, I. B. T.* v. *Wohl,* 315 U. S. 769, 62 Sup. Ct. 816, 86 L. ed. 1178 (1942); and *Cafeteria Employees Union* v. *Angelos,* 320 U. S. 293, 64 Sup. Ct. 126, 88 L. ed. 58 (1943).

In the *Wohl* case the New York Courts attempted to do exactly the same thing that the Appellate Court attempted to do in this case, namely to prevent the organization of self-employers, and to hold such a labor objective illegal. Yet, this Court declared that a state court lacked the authority to do so, since such an action would be in violation of the Fourteenth Amendment to the U. S. Constitution.

Employees have a right to organize and to enlarge their union's or organization's membership by all lawful means. If they proceed in that way, they act lawfully and not maliciously.

Chief Justice Taft said in *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209, 42 S. Ct. 72, 66 L. ed. 189 (1921):

> "To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild. It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious."

Thus, this Court recognized that it was a legitimate objective of unions to organize all those who compete by their labor with union men or work in the same trade or industry in the same locality.

The respondents were the direct competitors of many members of the union, whose membership consisted of truckdrivers, filling station employees and small filling station operators. Petitioners and respondents were also engaged in the same industry. This would have been true, even if the membership of the petitioning union had consisted of truck-drivers only, since truck-drivers belong to the same industry as filling station operators. Trucks cannot be driven without gasoline and filling stations cannot exist without automobiles. There is a vital interdependence between these two, which amalgamates them into a unit.

As emphasized in the trial court's opinion, many small filling station operators were members of the union, and as demonstrated by Plaintiffs' Exhibit No. 7 (Rec. 45), which is the union's form of agreement with service station operators, many filling station employees were also members of the union and represented by it in their collective bargaining agreements with employers.

Severe inroads upon the working conditions of these union filling station employees and filling station operators were threatened to be made by the respondents. They kept their stations open at all hours of the day and night; they tried to compete unfairly with other stations by the payment of sales premiums, and they did not conform to other working conditions prevailing in unionized stations, all practices which, if allowed to continue, could effectively undermine the working and employment standards of union men, working in union stations, by taking more and more business away from them. The petitioning union, therefore, had a vital interest in organizing the respondents, and the

first thing which the union men did when they tried to persuade the respondents to join the union, was to proffer them an agreement by which the respondents were to obligate themselves to conform to union standards, especially with respect to closing hours and the giving up of sales premiums. (Rec. 45).

Since the working conditions of the respondents vitally affect the standards of the union members, it is immaterial whether the respondents were self-employers or not. However, the respondents were self-employers in name only, merely in the sense that they worked without the help of any paid employees. In reality, they were under the complete dependence and control of the gasoline supplying companies. This was especially true of the respondents Dinoffria; the ground on which they lived and worked was owned by the company; the premises on which they conducted their business belonged to the company; the products sold were those of the company, and could be only those of the company. (See for similar situations: *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, 85 L. ed. 63; and *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 111, 64 S. Ct. 851.) Under these conditions, it is obvious that they were not self-employers but employees and that the artificial line of demarkation between the organization of self-employers and employees which the Illinois Appellate Court attempted to draw, was not even in this respect applicable.

## Conclusions.

The Illinois Appellate Court, without having jurisdiction, passed upon the constitutional issue of freedom of speech in its relation to the attempted organization of respondents by unions. It decided this question adversely to petitioners, in contravention to established principles laid down by this Court in the *Senn, Wohl* and *Angelos* cases.

The Illinois Supreme Court refused to hear the case upon motion to transfer or upon writ of error; it thereby denied petitioners any opportunity to have the case determined by a court of competent jurisdiction.

Thus, the petitioners were deprived of their constitutionally guaranteed rights in a twofold manner: first, by the refusal of the State Supreme Court to hear their case, which refusal vested in the Illinois Appellate Court—a court having no jurisdiction—the final authority in the State to determine federal constitutional questions; and second, by the decision of the Appellate Court which denied to petitioners the right of freedom of speech. Both of these actions of the State courts were in violation of the Fourteenth Amendment to the U. S. Constitution.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 80

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

VS.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

## No. 852

INTERNATIONAL BROTHERHOOD OF TEAMSTERS and CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, Joliet, Will County, Illinois, and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

vs.

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

### I.

**A real controversy is still in existence between the parties.**

The respondents assert in their brief opposing the petition for certiorari that the controversy in question is moot since the attorneys of the petitioners and respondents had entered into a stipulation indicating that all matters in controversy had been settled by the parties, and that they had filed a Joint Motion to that effect with the Illinois Su-

preme Court. They also state that the petitioners "carefully refrained from calling this Court's attention" to that stipulation and motion.

It is true that in their petition the petitioners did not emphasize the fact of the stipulation and motion, since they "carefully refrained", in accordance with the Rules of this Court (Rule 27 (d)), from including in the brief any matter which is immaterial and irrelevant for the consideration of the petition. However, the petitioners expressly included in the record, which was ordered by them, the stipulation and motion, in order to show that an attempt to settle the case was made which was defeated by the Illinois Supreme Court. Since that attempt failed, any reference to it in the petition for certiorari was unnecessary as having no bearing upon the controversy in question.

This case very nearly became a moot case, but this failed because of action of the Supreme Court of Illinois. Because of the fact that an issue was likely to be made, that it is a moot case, petitioners had all proceedings relating thereto incorporated in the record.

The parties agreed to a settlement, based upon a joint motion for the dismissal of the suit and all proceedings thereunder. The joint motion was rejected by the Supreme Court of Illinois. In their statement (page 1) "that the Petitioners and Respondents by their respective attorneys entered into a stipulation (Trans. 73) and a joint motion (Trans. 72)," the respondents make it clear that the joint motion and stipulation were both parts of a proposed settlement, and that the settlement was conditioned on the grant of the motion by the Supreme Court of Illinois. There was no completed compromise as in *Texas Consolidated Theatres* v. *Pittman*, 305 U. S. 3. The denial of the motion by the Supreme Court of Illinois made it necessary

that petitioners seek to establish their constitutional rights which had been defeated by the opinion of that state court.

The Supreme Court of Illinois dismissed the writ of error on January 22, 1948; and denied rehearing on March 11, 1948. Dismissal by stipulated agreement of the parties was denied on March 13, 1948 while the Court still had jurisdiction. By its dismissal of writ of error, denial of rehearing, and denial of a motion to dismiss, the Supreme Court of Illinois returned the case to its position when the Appellate Court reversed and remanded it to the trial court with the statement that

> "The decree entered herein, therefore, should be and hereby is reversed and the cause remanded with directions to enter a decree and proceed in accordance with the views expressed herein." (Transcript, 55.)

No subsequent agreement having been made, and no effort being made to enter into an agreement after the denial of an agreed motion to dismiss, petitioners did not seek to pay an amount agreed upon, subject to dismissal of the court proceedings, but took steps, after giving respondents proper notice, to stay the order of the Supreme Court of Illinois by a properly approved bond, in order to enable petitioners to apply to this Court for a writ of certiorari. (Trans. 74-75). Respondents made no objection to stay of the mandate of the state court, and must have known that this stay would defeat payments once agreed upon.

The stipulation by parties in this case indicated that respondents received and receipted for a consideration (Trans. 73), which was, however, not paid, nor to be paid, until the conditions of the agreement had been met. Respondents complain that the petitioners did not explain why they failed to pay this consideration, but they themselves explain by indicating that the agreement between the parties depended upon the granting of motion to dismiss by

the Supreme Court of Illinois. Had they desired, the parties could have entered into another stipulation after the failure of the Supreme Court to entertain their joint motion.

A case is not made moot by the failure to carry out an agreement for its settlement when, as here, the judgment of the Court remains in control. This Court may grant effective relief upon an issue presenting itself under the federal constitution, and such an issue presents itself in this case.

## II.

### The Illinois Appellate Court decided the constitutional question of freedom of speech.

Despite the respondents' denials, a reading of the Appellate Court's opinion conclusively shows that the Appellate Court decided the question of freedom of speech in its relation to the organization of self-employers by unions. (Petitioners' Brief, 14.) Once more it should be emphasized that the Appellate Court expressly declared that the primary issue of the case was whether the union acted lawfully in instructing its members not to make deliveries to plaintiffs, who were held to be self-employers. A determination of that issue necessarily involved a decision upon the question of freedom of speech. This was recognized by the Illinois Supreme Court which said in its opinion:

> "The Appellate Court specifically states * * * that the Union's conduct could not be protected by freedom of speech." (Transcript, 61.)

The Illinois Supreme Court refused to draw the necessary legal conclusion from that statement; thus necessitating this petition for certiorari.

As soon as the Appellate Court decided the question of freedom of speech, the petitioners pointed to the incorrect-

ness of the Court's ruling and took all possible steps to bring the case before the Illinois Supreme Court, which is the only body in the State of Illinois to determine constitutional questions. The respondents' argument, therefore, that a federal question does not affirmatively appear in the record, is without foundation.

In denying the existence of a constitutional issue, respondents rely upon a contention that there is lack of community of interest between petitioners and respondents—i. e. between union members and those whom the court regarded as self-employers, engaged in the same trade; and that therefore there is no constitutional right to freedom of speech in an effort to seek to induce persons to join a union. (Respondents' Brief 4, 5.) This disagrees with the position of this Court, and ignores the fact that respondents and members of the union are competitors engaged in the same trade, and that the standards of the one have a material effect upon the standards of the others. Respondents fully recognize this in admitting that respondents' hours of operation directly affect members of the union who are engaged in the same work. (Respondents' Brief, 4.) Community of interest is obvious, and is recognized by this Court in *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184.

## III.

### The right of freedom of speech protected the union in its organizing activities.

The respondents (page 5) contend, by referring to the testimony of Mr. Beshoor (Transcript, 35), that the union instructed the gasoline supply companies—and not the union members—to discontinue further gasoline deliveries to the respondents, and that these communications were

not protected by the right of freedom of speech. The Appellate Court, however, expressly determined that these instructions were given to the union members and therefore this communication was the crux and the basis of its decision. The Appellate Court stated that it was the primary issue of the case, namely whether the union acted lawfully *when it requested its members* not to make deliveries to respondents. (Trans. 47.)

The respondents seem to think that the right of freedom of speech should not protect the union's requests since they amounted to a call for action on the part of the union members. However, the constitutional guarantee of free speech may not be interpreted so narrowly; it extends to more than abstract discussion unrelated to action, and free trade in ideas means free trade and the opportunity to persuade to action, not merely to describe facts. (*Thomas* v. *Collins*, 323 U. S. 516, 89 L. ed. 430, 65 S. Ct. 315.) The necessary purpose of oral communication is to seek to persuade.

The respondents also contend that the union drivers did not act voluntarily in complying with the union's instructions but were coerced to do so by the fact that the union had the right to levy fines upon those of its members who refused to obey its instructions. Without any support by the record, respondents allege "that the stopping of deliveries was not accomplished by persuasion but by placing the drivers in fear of being fined". (Respondents' Brief, 6). There is no evidence of any driver having been fined at any time. Even though a union may have a right to require obedience of its rules so long as one remains its member, it is obvious that respondents are seeking to construct a case independently of the record.

Apart from the fact that the respondents attempt to draw an artificial line between the union and its members, and that there is not even the slightest evidence in the entire

record of the case which shows that the union members did not act out of their own free will, the respondents' contentions are best answered by the language of the well-known case of *Bossert* v. *Dhuy*, 221 N. Y. 342, 117 N. E. 582, in which similar contentions were made. There the Court said, on p. 587:

> "Voluntary orders by a labor organization for the benefit of its members and *the enforcement thereof within the organization is not coercion.* (Emphasis supplied.)

## Conclusion.

Petitioners respectfully submit that this case is properly submitted to this Court, and that it involves an important issue as to freedom of speech.

Respectfully submitted,

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1947.

No. [redacted]2 80

INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, JOLIET, WILL COUNTY, ILLINOIS and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

*vs.*

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

## BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1947.

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**No. 852.**

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS AND CHAUFFEURS, LOCAL UNION NUMBER 179, AMERICAN FEDERATION OF LABOR, JOLIET, WILL COUNTY, ILLINOIS and VIRGIL FLOYD, Secretary-Treasurer of said Local Union No. 179,

*Petitioners,*

*vs.*

LEO JOHN DINOFFRIA, FRANCES DINOFFRIA, JOHN CLEMENTI and MARY CLEMENTI,

*Respondents.*

---

## BRIEF AND ARGUMENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

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*To The Honorable, The Chief Justice and Associate Justices of The Supreme Court of the United States:*

## ARGUMENT.

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### I.

### The Questions Involved In This Petition Have Become Moot Questions By Reason of Agreement of Parties to Settle Their Controversy.

The Transcript of Record filed in this Court in support of the Petition for Writ of Certiorari shows that the Petitioners and Respondents by their respective attorneys entered into a Stipulation (Record 73) and a Joint Motion

(Record 72) indicating that all matters in controversy had been settled by and to the mutual satisfaction of all parties hereto. This Stipulation and Motion was filed in the Supreme Court of Illinois on March 13, 1948 (Record 71) which was two days after the Petition for Rehearing was denied (Record 70-71) in that court.

Petitioners have carefully refrained from calling this Court's attention to the said Stipulation and Motion because they know that this Court does not engage in deciding moot questions but only reviews actual controversies. (*Jones* v. *Montague,* 24 S. Ct. 611, 194 U. S. 147, 48 L. Ed. 913; *South Spring Hill Gold-Min Co.* v. *Amador Medean Gold-Min Co.,* 12 S. Ct. 921, 145 U. S. 300, 36 L. Ed. 712.)

The petitioners have not explained in their petition why they failed to pay the respondent the amount agreed upon and chose to bring this case to this Court after entering into the Joint Motion and Stipulation.

The refusal of the Supreme Court of Illinois to entertain this motion filed two days after the Petition for Rehearing was denied does not involve a constitutional question or a question to be reviewed by this Court.

## II.

### The Constitutional Questions Raised By Petitioners Do Not Affirmatively Appear In the Record But Are Based Solely On the Contentions of the Petitioners.

This case was originally tried in the Trial Court on Respondents' Amended Complaint (Rec. 6-14) and the Answer of the Petitioners (Rec. 14-20). The Petitioners in their answer categorically denied most of the allegations in the Respondents' Amended Complaint. The union admitted in Paragraph 4 of its Answer (Rec. 16-18) that it *informed* its members to stop deliveries to Respondents' stations.

The Respondents alleged in Par. 4 of their Complaint (Rec. 7, 11) and proved by the evidence (Rec. 35) that the union *instructed* the driver and the Standard Oil Company not to make deliveries to Respondents' stations. But nowhere in its Answer did the union seek to justify its acts as an exercise of its constitutional Right of Free Speech. The Petitioners first made claim to their constitutional Rights after the Appellate Court rendered its Opinion by an assignment of Errors (Rec. 40-43) and subsequently by filing a Motion To Transfer (Rec. 55) the cause to the Supreme Court.

The United States Supreme Court has refused to entertain jurisdiction where the Federal Question does not affirmatively appear in the record (*Lynch* v. *People*, 55 S. Ct. 16, 293 U. S. 52, 79 L. Ed. 191) and where there is nothing in the record to show the violation of a constitutional right except a contention (*Lynde* v. *Lynde*, 21 S. Ct. 555, 181 U. S. 183, 45 L. Ed. 810 affirming 56 N. E. 979, 162 N. Y. 405, 48 LRA 679, 76 Am. St. Rep. 332).

Since the pleadings do not raise a Constitutional question, the issues then before this Court are (1) whether the Appellate Court decided a Constitutional Question, (2) whether or not the Supreme Court of Illinois was correct in holding that the Appellate Court did not decide a constitutional question.

The respondents contend that the Appellate Court did not decide a constitutional question. In reviewing the record before it, the Appellate Court said (Rec. 48):

> "This Court shall direct its inquiry, therefore, to an analysis of the legality of the purpose of defendants' conduct and of the means employed to effectuate this purpose."

From the record before it, the Appellate Court found:

a. No contention or proof by petitioners that the respondents were failing to meet the standards and wages of employment fixed by the union (Rec. 49).

b. No contention or proof by petitioners that the Respondents were unfairly competing with the teamsters and chauffeurs union (Rec. 49).

c. No allegation or proof by petitioners that the respondents were conducting their businesses in a manner detrimental to the aims of the union (Rec. 49).

d. That the sole dispute the union had with respondents was the refusal to join the union, and, as a concomitant part thereof, to sign the contract (Rec. 44).

e. That respondents were self-employers (Rec. 47) and hired no employees.

The Appellate Court did not find as argued by petitioners:

a. That the union was composed of teamsters and service station employees (Page 1, Petition).

b. That Dinoffria was actually an employee of Standard Oil Company (Page 2, Petition).

c. That the respondents were direct competitors of many members of union (Page 21, Petition).

Based upon its findings the Appellate Court concluded that there was no community of interest between petitioners and respondents and that the sole conceivable purpose of seeking respondents' memberships in the union was to regulate the hours during which respondents kept their stations open, and to prohibit them from using premiums to stimulate sales (Rec. 49). The Appellate Court held that this was an unlawful purpose and in so holding did not decide a constitutional question.

The Appellate Court further held from its findings of fact that the primary purpose of the boycott was not to advance the interests of the union but to destroy the Respondents' businesses and livelihood in order to coerce the respondents into involuntary membership. This finding and holding did not involve the determination of a constitutional question.

And finally citing (*Carlson* v. *Carpenters Contractors' Ass'n. of Chicago*, 305 Ill. 331; *Doremus* v. *Hennessy*, 176 Ill. 608; *Meadowmoor Dairies Inc.* v. *Milk Drivers' Union of Chicago No. 753*, 371 Ill. 377) the Appellate Court held that it is an actionable wrong to directly or indirectly interfere with or disturb another in his business without lawful cause or justification for the sake of compelling him to do some act which in his own judgment his own interest does not require (Rec. 54). Here again this holding did not involve the determination of a constitutional question.

## III.

**The Method By Which Petitioners Accomplished the Stopping of Deliveries Was Not By the Exercise of the Right of Free Speech.**

It must be pointed out that the method of boycott used here was not the ordinary method of peaceful picketing by carrying placards and banners expressing the Union's position in order to persuade others to break off business relations with the Respondents. This was a direct approach to the Respondents' suppliers (Rec. 35) *instructing* them not to make deliveries.

It has already been pointed out under Point II of this brief that the record here does not contain any contention or proof by the petitioners that the respondents were jeopardizing the working conditions of the Teamsters.

In this respect and because of the lack of community of interest between the petitioners and respondents, the factual situation in the case at bar should be distinguished from the cases of *Meadowmoor Dairies* v. *Milk Wagon Drivers' Union*, 61 S. Ct. 552, 312 U. S. 287 and *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 57 S. Ct. 857. The only grievance which the Union had with Respondents was their refusal to join the union (Rec. 37).

It must also be pointed out the driver James E. Poole testified that he had no dispute with the Dinoffrias (Rec. 34); that the record showed from the testimony of Virgil Floyd that the Executive Board of the union had "the same power as a civil court" and could have fined the driver if he failed to carry out the instructions of the business agent (Rec. 37).

It is apparent from this situation that the stopping of deliveries was not accomplished by persuasion but by placing the drivers in fear of being fined. It is further apparent that this method of approach placed the oil companies in fear because although these drivers were their employees and under their supervision, they did nothing to override the instructions of the union (Rec. 35). They permitted the union to instruct them as to who should not get deliveries of their products.

The Respondents contend that under such circumstances as enumerated above, the verbal boycott was not an exercise of the Right of Free Speech.

The Right of Free Speech is not an absolute right (*Schaefer* v. *U. S.*, 40 S. Ct. 259, 251 U. S. 466, 64 L. Ed. 360). The true liberty of the press is secured by permitting every man to publish his opinions; but it is due to the peace and dignity of society to inquire into the motives of such publications; and to distinguish between those which are meant for use and reformation and with an eye solely for the public good and those which are intended merely to delude and defame (*Respublica* v. *Oswald*, 1 U. S. 319, I Dall 319, 1 L. Ed. 155, 1 Am. Dec. 246).

The First Amendment to the U. S. Constitution while prohibiting legislation against free speech as such cannot have been and obviously was not, intended to give immunity for every possible use of language (*Frohwerk* v. *U. S.*, 39 S. Ct. 249, 249 U. S. 204, 63 L. Ed. 561).

In *Chapinsky* v. *State of New Hampshire*, 62 S. Ct. 756, at page 769, Justice Murphy said:

> "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances."

In *Milk Wagon Drivers Union of Chicago, Local 753, et al.* v. *Meadowmoor Dairies Inc.*, 61 S. Ct. 552, at page 554, Mr. Justice Frankfurter speaking for the majority of this Court said:

> "It must never be forgotten, however, that the Bill if Rights was the child of the Enlightenment. Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guarantee of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The motive of this type of boycott was the complete destruction of Respondents' businesses so that they would be forced into involuntary membership. It must not be forgotten that if the Respondents' can be compelled by this method to join the union, they can by the same method be compelled to operate their stations in accord with the business agent's dictates.

Such a use of the Right of Free Speech does not appeal to persuasion nor does it fairly present the workingman's side of the controversy.

## Conclusion.

Respondents therefore respectfully submit that this case is not one calling for the exercise by this Court of its supervisory powers and does not show that petitioners have been, or will be, deprived of rights guaranteed them by the Federal Constitution. Petitioners do not make such a case as should be presented to this Court for consideration, and they should not be granted the Writ of Certiorari.

Respectfully submitted,

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